IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6668 OF 2005

Abhishek Ashok Moghe. ...Petitioner.
Vs.
The Union of India & Ors. ...Respondents.
....
Mr. P. B. Shah for the Petitioner.
Mr. M.I. Sethna with Mr. Namesh Dutt and Mr. P. Sharma for the Respondents.
.....
CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

February 3, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing.

The Petitioner was admitted to the MBBS Degree Course at the Armed Forces Medical College on 18th August 1998. Every student is required to execute an agreement with the First Respondent upon admission to the Armed Forces Medical College undertaking an obligation to render compulsory service in the

Armed Forces for a specified period upon the successful completion of the degree course. Clause (3) of the agreement provides for a situation in which a student will be treated as a "non-service liability" and thereupon he or she is liable to pay to the Union Government an amount of Rs.3 lakhs together with interest. Clause (3) provides as follows, in so far as is material:

> "3. In the event of a medical student:-
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> -a. being rendered medically unfit for commission due to any disease or disability contracted in the circumstances over which he/she has no control (on which the decision of DGAFMS shall be final) and for which he/she has not refused treatment or
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> b. fails in attendance below 50% in any two terms for the reasons other than medical or
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> c. fails to qualify final MBBS examination within a period of seven years from the date of entry into college;
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> shall be treated as a non service liability student, whereafter Clause 2 above shall be applied to such student. However, he/she can be permitted at the discretion of the Government to continue his/her studies on the payment of normal expenses of education including boarding and lodging where applicable, computed per actuals incurred on provisions/facilities inclusive of training charges but the student shall be removed from the hostel premises.
>
> Provided the student under clause 3(a) above may be allowed to continue his/her stay in the hostel and further the Government may if deemed fit, waive off a portion or full amount of recovery imposed under Clause 2 above."

In the present case, the admitted facts are that the final MBBS examination in the Theory Paper was conducted by the University from 6th to 10th August 2005 while the practicals were conducted on 13th August 2005. Thus, the final examination for which the Petitioner appeared was held within a period of seven years of the date of the entry of the Petitioner into the College namely, 18th August 1998. The results were, however, declared by the University thereafter on 16th September 2005. A letter was addressed to the Petitioner by the Second Respondent informing him of his removal from service liability for commission in the Armed Forces on 17th August 2005, the ground being :

> "... Due to unsatisfactory academic progress (having failed to qualify the final MBBS Examination within a period of seven years from the date of entry into the College on 18th August 1998). ..." (emphasis supplied).

The Petitioner was accordingly called upon to deposit an amount of Rs.3 lakhs. The father of the Petitioner wrote back on 11th August 2005 stating that he was a retired Railway servant with liabilities to meet. The father stated that he has kept aside his post retirement dues in a Fixed Deposit scheme and that accordingly some period

was required to arrange for a huge amount of Rs.3 lakhs. The father stated that he would deposit the amount as early as possible.

The Petitioner has challenged the communication of 29th July 2005 by which he came to be treated as a "non-service liability student". In the affidavit in reply that has been filed on behalf of the Respondents, the stand that has been taken is that since the Petitioner had joined the college on 18th August 1998, he was treated as a non-service student on 17th August 2005 on the expiry of a period of seven years. It has been stated that the Petitioner had not been able to pass the second and third MBBS Examinations at the first attempt and since he had taken more than seven years to pass MBBS, action as taken was in accordance with the agreement.

The answer to the issue which is raised in these proceedings turns upon the meaning of clause 3(c) of the agreement. The contingency that is contemplated by clause 3(c) is the failure to "qualify the final MBBS examination within a period of seven years from the date of his entry into College." In the present

case the student appeared for the final MBBS Examination within a period of seven years from the date of the entry into College. He has passed that examination. That the result of that examination came to be declared after the period of seven years is a matter over which the student has no control. What is material is that the Final MBBS Examination at which the student has qualified is in fact, the examination which was held within a period of seven years from the date of entry into College. So long as the student has qualified by passing the final examination that was held within a period of seven years from the date of entry into the College, it would be manifestly arbitrary to treat him as a non-service liability because the result came to be declared by the University beyond a period of seven years. We wish to clarify that we have only dealt in these proceedings with the ground which has been advanced on behalf of the Respondents for treating the Petitioner as a non-service liability student, namely the alleged “failure to qualify the Final MBBS Examination within a period of seven years”. This ground as we have noted above is referable to clause 3(c) of the agreement. This is not a case in which a student has been removed under clause 1(d) from the College Roll on the ground that he was considered by the appropriate authority to be unfit to

continue as a medical student. The petition has been argued on this basis that this is not a case under clause 1(d) but under clause 3(c) because it is only under clause 3(c) that the student is permitted to complete the medical studies subject to the requirement of paying the amount stipulated therein. The letter dated 11th August 2005 written by a person in the position of the petitioner's father – retired from the Railways with meager financial means – cannot stand in the way of this Court rendering a correct construction of the terms of the agreement that is executed by the First Respondent with each student. In these circumstances, we are of the view that the Petitioner is entitled to succeed. Rule is made absolute in terms of prayer clause (b). No order as to costs.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)